TL 6058

COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION IN EAST TIMOR

Summary of the Regulation

On 13 July 2001, the Transitional Administrator, Sergio Vieira de Mello, signed Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor. The following is a summary of this 26 page document. This summary is also available in Indonesian.

Introduction

The Commission is an independent national institution which will inquire into human rights violations committed on all sides between April 1974 and October 1999 and facilitate community reconciliation for those who committed less serious offences.

A Commission was originally proposed by the CNRT Congress held in August 2000. Detailed planning for its operation was carried out by a Steering Committee comprising representatives of CNRT, six East Timorese NGOs, UNHCR and the UNTAET Human Rights Unit. In addition to receiving the endorsement of the National Council and the Cabinet, the Steering Committee conducted consultations in each District on the proposed Commission.

Timetable

The Commission is expected to commence work in late 2001. It will operate for two years (with a six month extension if needed). At the end of its work, it will make a report to the government including recommendations for further action on reconciliation and the promotion of human rights.

Structure

The Commission will be headed by 5-7 National Commissioners. In addition to a national office, the Commission is expected to have up to 6 regional offices, headed by 25-30 Regional Commissioners. Commission offices will be staffed by East Timorese, supported by a small number of international technical experts.

A Selection Panel comprising representatives of four political parties, NGOs, the Church, and two UN nominees will consult with the community and propose the names of suitable commissioners and the Commission Chairperson for appointment by the Transitional Administrator.

Commissioners must be persons of high moral character, impartiality, integrity, commitment to human rights and competence. They should not have a high political profile or be the spouse or blood relative in the first degree (parent/child/sibling) of another Commissioner. At least 30% of commissioners are to be women. Commissioners will take an oath of independence and impartiality.

Functions

The Commission has two main functions.

1. Truth Seeking

The Commission is mandated to investigate human rights abuses that occurred in the context of political conflicts in East Timor between 25 April 1974 (Portugal's Carnation Revolution) and 25 October 1999 (beginning of UNTAET).

It will give particular consideration to (a) events before and after the popular consultation of 30 August 1999, and (b) the period before and after the Indonesian invasion of 7 December 1975 and the impact of Indonesia's presence up to 25 October 1999.

For this purpose, the Commission can:

- convene hearings (either public or 'closed'),
- require witnesses to attend hearings and give evidence to the Commission,
- seek an order for the police to carry out a search of premises for relevant evidence,
- arrange exhumation of bodies with the permission of the Office of the General Prosecutor,
- request information from government authorities and agencies in other countries,
- convene, with the agreement of the Transitional Administrator, hearings outside East Timor,
- make special arrangements for hearings involving particular groups of victims, such as women and children,
- carry out additional research and inquiries to enable a comprehensive, authoritative report to be written.

The Commission's national office will undertake special case investigations and historical research and administer a nation-wide statement-taking process. The Regional Offices will support the National Office in this work and administer the statement-taking in the communities.

Report

The Commission's report will be important for its presentation of a national history and for pointing the way in which legal and institutional reforms can be undertaken to safeguard human rights in the future.

This document will report on the Commission's inquiries into:

* the extent of human rights violations,
* the causes of such violations including the circumstances, factors, motives and perspectives leading to such violations,
* the persons, authorities, and organisations responsible for the violations, and
* present the Commission's recommendations on reforms and initiatives to prevent future human rights violations.

All evidence that the Commission receives can be potentially used to prosecute individuals. However, a witness may not be compelled to incriminate himself or herself and has the right to be represented by a legal adviser at hearings. Priests, lawyers and

doctors also have certain professional obligations to their clients which must be respected.

The Regulation makes it a criminal offence to:

- knowingly provide the Commission with false or misleading information,
- to fail (without reasonable excuse) to comply with an order issued by the Commission to appear, give evidence and/or produce evidence relevant to the Commission's inquiries.

Through the Commission inquiry process, East Timorese will be able to come forward and tell their stories of what has happened to them since 1974. Truth telling acknowledges the suffering of victims and assists healing. Evidence collected by the Commission will also assist in the prosecution of those responsible for the planning or commission of serious crimes and human rights violations.

2. Community Reconciliation

The Commission is based on the principle that genuine reconciliation requires justice and that individuals must accept responsibility for their actions.

Those responsible for serious crimes are liable to prosecution under Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences.

The Regulation on reconciliation, however, recognises that there are many individuals who have committed less serious offences who wish to be reconciled with their communities. It therefore gives the Commission the function of facilitating 'Community Reconciliation Agreements' (CRAs) between the local community and the perpetrator of less serious crimes.

Content

Whether a crime should be considered less serious will be determined by:

- the nature of the crime; e.g. offences such as theft, minor assault, arson (other than that resulting in death or injury), the killing of livestock or destruction of crops might be considered less serious offences which could be the subject of a community reconciliation process;
- the total number of acts which the individual committed;
- the individual's role in the commission of the crime; e.g. a person who followed the orders of others in carrying out a crime is more likely to be dealt with in a community reconciliation process.

Serious criminal offences such as murder, rape, organising or planning crimes and crimes against humanity will never be considered less serious and will not be dealt with by the Commission.

Process

An individual who has committed a less serious offence and wishes to use the community reconciliation process should take the following steps:

- contact an office of the Commission,
- submit a written statement,
- participate in a hearing,
- undertake an act of community reconciliation.

An offender's written statement should contain the following: a description of the offence, acknowledgment of responsibility, how the offence relates to East Timor's political conflict, which community the offender wishes to reconcile with, and a renunciation of violence to achieve political objectives. If necessary, the Commission can help with the preparation of the statement. This statement will be provided to the Office of the General Prosecutor. A Committee of the Commission will decide, in conjunction with the Prosecutor, whether the case should be dealt with by the Commission or the Prosecutor.

Hearings are carried out at the regional level. A panel of local leaders, chaired by a Regional Commissioner, will call together a meeting of the offender, victims and local community members. Measures will be taken to protect victims and witnesses who appear before the Commission and to ensure everyone is treated with compassion and respect and can communicate in the language of their choice.

At the hearing, the panel may question the individual about the involvement of others in the acts disclosed. If the individual refuses to answer such questions without a valid justification, the panel may stop the hearing and submit the original statement back to the Prosecutors. After the hearing, the panel will recommend an 'act of reconciliation' for the individual e.g. community service, reparation, a public apology and/or another act of contrition. If the individual agrees with this act, a 'community reconciliation agreement' is decided on and registered with the nearest District Court. Community reconciliation agreements must not violate human rights or be excessive. Failure to fulfil them, however, is a criminal offence and may be punished by up to 1 year imprisonment and/or a fine of up to $US 3000. An offender who completes the agreement cannot be prosecuted or be subject to civil liability regarding the acts in question.

By participating in this process, individuals will be able to demonstrate to their own communities that they are sorry for what they have done and that they wish to live together in peace. Individuals who do not use the Commission process will be liable to normal legal prosecution now or in the future.

General offences

In addition to giving the Commission powers to carry out its functions, the Regulation protects the Commission from undue interference. It is a criminal offence to:

- hinder the Commission,
- improperly influence the Commission,
- threaten, intimidate or improperly influence a person who has cooperated or plans to cooperate with the Commission,
- disclose confidential information received by the Commission.

Other parts of the Regulation deal with the immunity of the Commission and its staff in the conduct of its work in good faith and confirm the pre-existing privileges and immunities of the United Nations and its Specialised Agencies.